

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

WAR N. MARION,

Plaintiff,

v.

JANEL NICKEL, DYLAN RADTKE,
CHAD KELLER and BENJAMIN NEUMAIER

Defendants.

ORDER

09-cv-723-bbc

Judgment was entered in this case on March 23 2011 after a jury verdict in favor of defendants, dismissing this case. Plaintiff has filed a second notice of appeal. Dkt. #137. Also, he has a filed a request for leave to proceed in forma pauperis on appeal. Dkt. #142. It appears that this appeal is a second appeal of the same judgment from which he filed his first notice of appeal (dkt. #136).

Plaintiff's request is governed by the 1996 Prison Litigation Reform Act. This means that this court must determine first whether plaintiff's request must be denied either because he has three strikes against him under 28 U.S.C. § 1915(g) or because the appeal is not taken in good faith. Plaintiff does not have three strikes against him. It appears from his

second notice of appeal that he may have believed the first notice of appeal was not mailed by the institution. Although this second appeal is duplicative, I do not intend to certify that it is not taken in good faith.

However, I cannot tell whether plaintiff qualifies for indigent status on appeal because he has not submitted a trust fund account statement for the six-month period immediately preceding the filing of his notice of appeal. Therefore, I will stay a decision on plaintiff's request for leave to proceed in forma pauperis pending his submission of the necessary trust fund account statement.

ORDER

IT IS ORDERED that a decision whether plaintiff War Marion may proceed in forma pauperis on appeal is STAYED. Plaintiff may have until May 23, 2011 in which to submit a trust fund account statement for the six-month period beginning approximately October 14, 2010 and ending approximately April 14, 2011. If, by May 23 2011, petitioner fails to submit the necessary trust fund account statement, I will deny his request for leave to proceed in forma pauperis on appeal for his failure to show that he is entitled to indigent

status on appeal.

Entered this 3d day of May, 2011.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge